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entered into between the plaintiff and defendant must have been made with the understanding that the defendant was to keep such a reserve fund and to add to it as its business extended.

ADMISSIBILITY OF EVIDENCE ILLEGALLY OBTAINED. — Since the law of evidence is a product of the development of trial by jury, the test of admissibility always has been: is it safe to entrust the fact to a jury; not, is it fair to the other party. It has been held, therefore, that evidence was admissible though obtained by the plaintiff unlawfully. *Legatt* v. *Tollervey*, 14 East 302. And so evidence found on an unwarrantable search by a private detective has been admitted. *Grindrat* v. *People*, 138 Ill. 103. Even where the illegal seizure was by a public officer, most jurisdictions have held, that evidence procured thereby is competent. *Com.* v. *Henderson*, 140 Mass. 303; *Starchman* v. *State*, 36 S. W. Rep. 940 (Ark.). However, in the recent case of *U. S.* v. *Wong Quong Wong*, 94 Fed. Rep. 832 (Dist. Ct., Vt.), where private letters of the defendant which had been opened wrongfully by customs officials furnished the evidence on which an order had been issued for his deportation, the order was reversed by the United States District Court. The ground taken by the court was that the evidence was inadmissible since obtained in violation of the Fourth and Fifth Amendments to the Constitution of the United States. This decision deals a sharp blow to a common practice of prosecuting officers hitherto justified on technical grounds of evidence.

From the standpoint of constitutional law it has been urged in the State courts that these amendments were meant simply to restrict the legislature in authorizing and the executive in issuing certain governmental orders; that the duty of the courts was only to punish illegal seizures by executive subordinates and denounce statutes providing for such acts. *Williams* v. *State*, S. W. Rep. 624 (Ga.). In opposition to this, in *Boyd* v. *U. S.*, 116 U. S. 616, the Supreme Court of the United States held it was error to admit evidence produced by order of court under such a statute. This case has since been distinguished in the State courts from facts such as those in the principal case, in that here the violation of the defendant's right was by order of court. The principal case, however, put *Boyd* v. *U. S.*, *supra*, on the broader ground that, admitting the act of a government official violated the protection given by the Constitution, evidence obtained thereby is inadmissible.

There is an intimate relation between the Fourth and Fifth Amendments in these cases. Unwarrantable seizure of papers of an accused by State officials to be used in evidence against him is in effect compelling him to testify against himself. To say that the prohibition of the former is addressed to the executive, of the latter to the judiciary, is to separate what seem naturally connected. To admit as evidence facts found as a result of the violation of these rights accomplishes the sole purpose of the violation and renders the protection practically worthless. One department of the government would be aiding another in violating the fundamental law they both administer. Indeed such admission of evidence would seem to be itself a substantial violation of these amendments. In this view of the case the technicalities of the law of evidence must yield to the broader scope of constitutional interpretation.